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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
PATTERSON, MARC A

ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 10/01/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/932,523	KONG, DAN-CHENG	
	Examiner	Art Unit	
	Marc A Patterson	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the c rrespondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 June 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *23-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *23-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

WITHDRAWN REJECTIONS

1. The 35 U.S.C. 112 second paragraph rejection of Claims 2 – 3 and 8 – 9, of record on page 3 of the previous Action, is withdrawn

The 35 U.S.C. 103(a) rejection of Claims 1 – 5, 10 – 11 and 13 – 15 as being unpatentable over Tokushige et al (U.S. Patent No. 5,866,634), of record on page 4 of the previous Action, is withdrawn.

The 35 U.S.C. 103(a) rejection of Claim 6 as being unpatentable over Tokushige et al (U.S. Patent No. 5,866,634) in view of Suzuki et al (U.S. Patent No. 5,691,424) and 35 U.S.C. 103(a) rejection of Claims 7 – 8 and 12 as being unpatentable over Tokushige et al (U.S. Patent No. 5,866,634) in view of Ikado et al (U.S. Patent No. 5,766,748), of record on page 6 of the previous Action, is withdrawn.

The 35 U.S.C. 103(a) rejection of Claim 9 as being unpatentable over Tokushige et al (U.S. Patent No. 5,866,634) in view of Ikado et al (U.S. Patent No. 5,766,748) and further in view of Lee et al (U.S. Patent No. 5,861,461) of record on page 7 of the previous Action, is withdrawn.

REPEATED REJECTIONS

2. The 35 U.S.C. 112 second paragraph rejection of Claim 1 (now Claim 23), of record on page 2 of the previous Action, is maintained.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 25 – 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 25 recites the limitation "toughening agent" in line 1. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'said sleeve label is a lap – seal' is indefinite as it is unclear whether a label or seal is being claimed. For purposes of examination, the claim will be assumed to be directed to a sleeve label.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 23 – 26 and 33 – 35 are rejected under 35 U.S.C. 102(b) as being anticipated by McCarthy et al (U.S. Patent No. 5,883,199).

With regard to Claim 23 and 25 – 26, McCarthy et al disclose a thermoplastic multi – layer film (film laminated with paper; column 7, lines 37 – 55) comprising 60% by weight of a polylactic acid (column 2, lines 21 – 35) comprising any amount of 1 to 8 mol% of D-lactic acid (any amount; column 2, lines 21 – 35) and 40% of a toughening additive comprising polybutylene succinate / adipate (column 2, lines 36 – 45).

With regard to Claim 24 and 33 – 35, McCarthy et al disclose a laminated paper as discussed above. The claimed aspect of the paper comprising a second layer of the film (therefore a skin layer) therefore reads on Mc Carthy et al.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 30 – 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al (U.S. Patent No. 5,883,199).

McCarthy et al disclose a multilayer film comprising polylactic acid as discussed above. With regard to Claims 30 – 31, McCarthy et al fail to disclose a film having a thickness of 3 mils. However, Mc Carthy et al disclose a film having a thickness of 12 mils (0.3 millimeter; column 6, lines 58 – 67). Therefore, the thickness would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end use of the product. It therefore would be obvious for one of ordinary skill in the art to vary the thickness,

since the thickness would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by McCarthy et al. *In re Boesch and Slaney, 205 USPQ 215 (CCPA 1980).*

10. Claims 27 and 36 – 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al (U.S. Patent No. 5,883,199) in view of Tokushige et al (U.S. Patent No. 5,866,634).

McCarthy et al disclose a multilayer film comprising polylactic acid as discussed above. The film is a packaging material (column 4, lines 41 – 52 of McCarthy). With regard to Claims 36 and 38 – 39, McCarthy et al fail to disclose a film which is a sleeve label applied to a container with an adhesive and which comprises an antiblocking agent.

Tokushige et al teaches that it is equivalent to use a film comprising polylactic acid (column 4, lines 59 – 65 of Tokushige et al) as a packaging material or a label for application to bottles (therefore a sleeve label which is applied to the container with an adhesive adjacent to the surface; column 4, lines 41 – 54 of Tokushige et al) for the purpose of obtaining a label which is excellent in printability (column 4, lines 41 – 51 of Tokushige et al). The desirability of providing for a sleeve label in McCarthy et al, which is a multilayer film comprising polylactic acid, would therefore be obvious to one of ordinary skill in the art.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a sleeve label in McCarthy et al in order to obtain as taught by Tokushige et al.

With regard to Claim 27, Tokushige et al disclose an antiblocking agent (lubricant; column 3, lines 11 of Tokushige et al).

With regard to Claim 37, the scope of the claims falls within the limitations of McCarthy et al and Tokushige et al as discussed above. The method of making the sleeve label (product – by – process) is given little patentable weight.

11. Claims 28 – 29 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al (U.S. Patent No. 5,883,199) in view of Tokushige et al (U.S. Patent No. 5,866,634) and further in view of Ikado et al (U.S. Patent No. 5,766,748).

McCarthy et al and Tokushige et al disclose a lactic – acid polymer film as discussed above. With regard to Claims 28 – 29 and 32, McCarthy et al and Tokushige et al fail to disclose a film which is cavitated and which comprises calcium carbonate, and a film which is biaxially oriented.

Ikado et al teach a film which comprises calcium carbonate as a filler (the film therefore comprises cavities, containing the calcium carbonate; column 3, lines 58 – 61) and is biaxially oriented (column 3, lines 65 – 66) for the purpose of obtaining a film having an improved level of durability (column 1, lines 60 – 65). The desirability of providing for cavitation and calcium carbonate and biaxial orientation in McCarthy et al and Tokushige et al, which is a lactic acid film, would therefore have been obvious to one of ordinary skill in the art.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for cavitation and calcium carbonate and biaxial orientation in McCarthy et al and Tokushige et al in order to obtain a film having an improved level of durability as taught by Ikado et al.

ANSWERS TO APPLICANT'S ARGUMENTS

12 Applicant's arguments regarding the 35 U.S.C. 112 second paragraph rejection of Claims 2 – 3 and 8 – 9, 35 U.S.C. 103(a) rejection of Claims 1 – 5, 10 – 11 and 13 – 15 as being unpatentable over Tokushige et al (U.S. Patent No. 5,866,634), 35 U.S.C. 103(a) rejection of Claim 6 as being unpatentable over Tokushige et al (U.S. Patent No. 5,866,634) in view of Suzuki et al (U.S. Patent No. 5,691,424), 35 U.S.C. 103(a) rejection of Claims 7 – 8 and 12 as being unpatentable over Tokushige et al (U.S. Patent No. 5,866,634) in view of Ikado et al (U.S. Patent No. 5,766,748), 35 U.S.C. 103(a) rejection of Claim 9 as being unpatentable over Tokushige et al (U.S. Patent No. 5,866,634) in view of Ikado et al (U.S. Patent No. 5,766,748) and further in view of Lee et al (U.S. Patent No. 5,861,461) of record on page 2 of the previous Action, have been considered and have been considered to be persuasive. The rejections are therefore withdrawn. The new 35 U.S.C. 112 second paragraph rejections of Claims 25 – 26 and 37, 35 U.S.C. 102(b) rejection of Claims 23 – 26 and 33 – 35 as being anticipated by McCarthy et al (U.S. Patent No. 5,883,199), 35 U.S.C. 103(a) rejection of Claims 30 – 31 as being unpatentable over McCarthy et al (U.S. Patent No. 5,883,199), 35 U.S.C. 103(a) rejection of Claims 27 and 36 – 39 as being unpatentable over McCarthy et al (U.S. Patent No. 5,883,199) in view of Tokushige et al (U.S. Patent No. 5,866,634) and 35 U.S.C. 103(a) rejection of Claims 28 – 29 and 32 as being unpatentable over McCarthy et al (U.S. Patent No. 5,883,199) in view of Tokushige et al (U.S. Patent No. 5,866,634) and further in view of Ikado et al (U.S. Patent No. 5,766,748) above are directed to newly submitted Claims 23 – 39.

Applicant has not addressed the 35 U.S.C. 112 second paragraph rejection of Claim 1 with regard to the term 'core,' of record on page 2 of the previous Action. The rejection is therefore repeated above.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold

Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.
Art Unit 1772

HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

9/17/03